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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,781

03/31/2004

James Lee Gardiner

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

09/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,781

Applicant(s)

GARDINER, JAMES LEE

Examiner

James N. Smalley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 27 June 2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6, 9, 17-18, 21, 26 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon US 5,692,633.

Gordon '633 teaches a container with a circular center panel (18), a peripheral curl (42), an annular groove (unlabeled; best seen in figures 3-4 at element 18), and a filler material (16) covering the groove whereby a portion of the center panel is exposed when the filler material is covering the groove via aperture (34). The second cover is flush with the first cover, as well as thin, and thus it is read to extend to about the same level as the center panel as the heights differ by a thin enough margin to be considered "about" the same height. Being formed of aluminum, the second cover is a natural material usable with beverage containers. Regarding claim 3, the second cover is capable of being snapped off the can end, and thus is read to be "removable". Regarding claim 26, the outer end of the center panel is folded to the container body, thus comprising a mechanical deformation.

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4. Claims 1-4, 6-9, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Root US 4,834,258.

Gordon '633 teaches a container with a circular center panel (14), a peripheral curl (42), an annular groove (18), and a filler material (16) covering the groove whereby a portion of the center panel is exposed when the filler material is covering the groove via aperture (34). Although the cover does not cover over the entire annular groove, the fact that it covers over a portion of the groove is read to meet the limitation "when the filler material is covering the groove." The second cover is flush with the first cover, as well as thin, and thus it is read to extend to about the same level as the center panel as the heights differ by a thin enough margin to be considered "about" the same height. Being formed of aluminum, the pivotable cover/filler material is a natural material usable with beverage containers. Regarding claim 3, the pivotable cover is capable of being snapped off the can end, and thus is read to be "removable". Regarding claim 7, the opening is only shown in phantom in figure 1; however the reference teaches forming an opening defined by "score lines" in column 4, line 42. Regarding claims 8 and 20, the flat top surface permits liquid adjacent the opening to flow back into the hole automatically, as there are no obstacles therebetween. Regarding claim 26, the outer end of the center panel is folded to the container body, thus comprising a mechanical deformation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon US 5,692,633 in view of Tominaga et al. US 5,653,355.

Gordon '633 fails to teach reinforcing ribs on the cap outer surface.

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Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Gordon '633, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Root US 4,834,258 in view of Tominaga et al. US 5,653,355.

Root '258 fails to teach reinforcing ribs on the cap outer surface.

Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Root '258, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,425,493. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

10. Claims 1-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,729,495. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

Response to Arguments

11. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

12. Claims 10-16, 22-25 and 27-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and with the timely filing of a Terminal Disclaimer.

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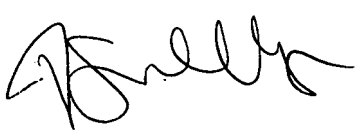
Conclusion

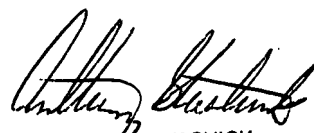
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns

 9/14/2007


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